

International Mediation and Conciliation A Permanent Function

This is a proposal to establish within the present framework of the United Nations a permanent subsidiary service to facilitate the conducting of negotiations between nations in conflict. The function of this service would be to provide qualified mediators and conciliators recruited from all over the world, and prepared for assignment as each need arose. The objective is prompt and efficient handling of disputes in their early stages.

The idea amounts to what could be called the "International Mediation and Conciliation Service."

The salient feature of this proposal is that mediation service would be provided quietly but swiftly by the United Nations and before conflict reached the stage of public debate. Mediation and conciliation would thus become the instrumentality, at working level, for resolving disputes, those now existing and those most likely to occur. This would be particularly true among the new countries recently admitted to the United Nations, and also those struggling for independence.

Another important feature is that no revision of the Charter would be necessary.

The question involved is: "How do we make Article 33 work continuously?" This proposal would attempt to advance toward the answer by: calling attention to the unsolved problems; profiting from experiences to date; calling for re-affirmation of Article 33*; implementing it with a service of competent creative mediators to guide and assist the parties; emphasizing that this is a permanent continuing function and not an occasional requirement; gaining acceptance of the "third party" approach; providing arbitrators upon joint request of the parties; cooperating in the development of regional arrangements, or other peaceful means, both temporary and contractual, where such are

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consistent with UN policy; supporting the judicial settlement commitments and studying the judicial vs non-justiciable disputes handling for purpose of definition and clarification of procedures; exploring the establishment of special UN assistance in mediating and arbitrating disputes between a government and foreign investors; recognizing and encouraging the hundreds of examples of "good offices" and "third party" informal conciliative efforts by UN missions and agencies and nations' representatives; performing any other disputes settlement service when called upon by an organ or agency of the UN.

This proposal would, of course, recognize that the primary responsibility for the maintenance of international peace and security rests with the Security Council. It is not necessary to take away any powers from it or any of the other existing organs, nor to delegate such powers to the service. The latter would become a new supporting staff arm, created to settle disputes on a case-by-case basis. It would perform a single specialized function.

This new service would not detract from the function and activity of these organs. The purpose would be to bolster their effectiveness, especially the Secretariat, which has performed admirably. Case-load pressures and other spotlight tensions would be diminished or perhaps prevented. This would permit these organs to concentrate on their agenda.

The service would function apart from the six main organs of the UN, but would be responsive to all of them. It would reflect their views.

The proposed service would have no policy function. It would operate under rules of procedure concurred in by the interested organs. An administrative staff, probably located within the Secretariat, would carry out procedures and function in accordance with these rules. This would include the recruitment and assignment of mediators and conciliators. The cost would be modest. Mediating personnel would be used mainly on an *ad hoc* basis. The bulk of the personnel would be compensated only when actually engaged. Once qualified and cleared, these persons would be listed on a stand-by panel.

As disputes arise, they could be referred to the service by one of the organs, or by a member or a non-member nation, or by one of the specialized agencies, or from any other source recognized by the UN. The treatment of each case would vary, and be tailored to recognize conditions peculiar to that particular case. For every lock there is a key; and this proposal would put a qualified staff to work, all over the world, in search for the key where a locked door appeared.

Rationale and Supporting Data

There is a need for this service. The demands upon the United Nations organization and their agencies have been tremendous. These demands increase with the birth of new nations and the addition of new members.

The need for strengthening and implementing the United Nations' mediation processes have been pointed out frequently by authorities and scholars both inside and outside the United Nations.

Experience to Date

Experiences in the handling of actual cases by the United Nations, its organs, its subsidiaries, various individual mediators and commissions have led to similar proposals. This proposal grows out of these experiences.

The Secretariat has been called upon in most cases to locate personnel to serve the UN. This has always been on an *ad hoc* basis and usually within the atmosphere of debate and tension characteristic of a crisis. The Secretary-General has often served in person. Under-Secretary Ralph Bunche, Jr. has served with distinction.

One of the risks which often occurs in such mediation service by an "office" is that the incumbent or the office may be attacked by dissenters. This could be fatal to the officer. So much so was the case of Trygve Lie that he resigned. The office could be seriously affected. So much was the case of Dag Hammarskjöld that the Secretariat itself and all its work was put in jeopardy. He was on a mediation mission when he went away. The expectation of this proposal is that mediation may be conducted in such a way that attackers will find a less likely target. This would be less risk to the life and growth of UN.

Before leaving the heading of experience, a lesson should be clearly established by the past experience of almost every conciliator and mediator: he is expendable.

Ample precedent exists for these organs to delegate these mediative functions. From the beginning, the Security Council and the Assembly appointed variously titled committees, "good offices," commissions and individual mediators. This policy and procedure has continued on an *ad hoc* basis. Experiences in the questions involving Indonesia, India, Pakistan, Korea, The Balkans, and Palestine are examples of referral of a dispute by the Security Council or the

Assembly to a commission, a committee, a "good office" or to an individual mediator for mediation follow-up.

In the India-Pakistan case, the Commission recommended its own dissolution in favor of an individual mediator, stating its doubts "as to whether a five-member body is the most flexible or desirable instrument."

The Security Council, acting upon advice of the Assembly unanimously decided early that "should an appropriate occasion arise" it would use the services of a conciliator, or a "rapporteur," to meet informally with the parties at the outset to secure agreement.

It has been the practice for the Council to impose upon the "good offices" of an agency or official to serve as mediator, as in the Dutch-Indonesian case.

The International Panel for Inquiry and Conciliation was established by the General Assembly in 1949. The Panel was activated but used only once. Frank P. Graham was appointed from the Panel by the Security Council to mediate the India-Pakistan question.

In the past the Council and the Assembly have referred cases back for direct negotiation. In certain cases this has resulted in a freezing of positions.

No Substantive Change Proposed

Under this proposal the Security Council and Assembly would continue to mediate and conciliate. These organs would not relinquish their authority. They would continue their function as now. Cases would continue upon their agenda. A case might be recalled from the service for special consideration by one of the organs.

It is our opinion that mediation can function with better results in a more liquid atmosphere than exists today in either Council or Assembly chambers—and that frequently best results could occur before the issue is debated in public.

One observer pointed out that, under the present set of procedures, the majority of disputes undergo a crystallization before reaching the Security Council. Most qualified mediators agree that public and general debate has limited value except as a last resort.

This suggests that in a case of prolonged negotiations in a dispute adamantly deadlocked, the Security Council recommendations or General Assembly resolutions might be used as a final step. If the mediation process were made to lead up to a public hearing and reinforced by the moral impact of world opinion, it could strengthen

the mediation process all along the line. Ultimately a prolonged or obstinate situation if unsettled could be brought to the Council or the Assembly for such action.

The basis of this proposal is that a great deal could be accomplished initially in a case by individuals with broad experience in mediation. They would continue discussions and explorations of the various alternatives incident to possible settlement.

It is well known that flexibility and versatility are the essence of the mediation art and process. Committees or Commissions would continue to be used where preferable to the single mediator.

Time Saving Value

We believe that under this proposal the United Nations could avoid some of the lengthy debate, alignment and realignment necessary under its rules to secure a resolution on certain cases; and it might avoid various irritations and tensions, with subsequent statements for public consumption, that do little good from the standpoint of reaching an agreement.

Staffing the Panel

Qualified men are available. The Secretariat has proved resourceful in locating persons for emergency service, as the record shows. As long ago as 1949, recruitment commenced for the Panel for Inquiry and Conciliation. Twenty-seven nations submitted nominations.

A precedent for recruiting such a panel was set by the permanent Court of International Arbitration. In that case the function was arbitration. That experience of using a master panel of available arbitrators suggests a practical method of finding competent men.

The actual assignment or selection of the person or persons to serve would be handled by the service.

After a panel is set up the best method for assignment to a case would be selection by agreement of the parties. In the event special qualifications are required in a case and such are not found among panel members, then a special mediator would be recruited.

Judicial vs Non-Judicial

There is a vast area which now exists on the one hand between the public debate and formal procedures currently employed by the Security Council, and the Assembly; and on the other hand the more

judicial, but rarely used, procedures of the Court of Justice. This will be an area jurists will watch carefully. The past activity of the Secretariat in this area would be bolstered and expanded by this proposal. It would not interfere with legal procedures, but simply assist negotiation.

A dispute might turn out to be purely judicial in character, such as the interpretation of a treaty. In that case, it would be within the jurisdiction of the International Court of Justice. Or it might be a split case, partly judicial and partly non-justiciable. The judicial part could be handled by the Court of Justice, the other by the proposed service.

The Commission to Study the Organization of Peace, headed by Professor Arthur N. Holcombe, takes cognizance of reluctance by certain powers to go to the International Court of Justice. The Commission reports (Thirteenth Report, January, 1961) that international law is a result rather than a cause of progress toward ordering relationships. This Study Commission says the United Nations is not so much a means of achieving world order as a product of advances toward order. This suggests a stepping up of the pragmatic approach, more discussions and settlements of differences by mediation in case after case.

Special Arrangements

Through the pact at Bogotá, the Organization of American States provided for the peaceful settlement of disputes in the region affected; and proposed a Commission of Investigation and Conciliation, with a Permanent Panel of American conciliators.

Regional arrangements of this sort might be encouraged at the North Atlantic Treaty Organization, the SEATO, the O.A.S. and elsewhere.

Secretary General Hammarskjöld made a special speech toward the end of his busy career to recommend the establishment of procedures to settle disputes between member nations and foreign investors. Donald B. Straus, President of the American Arbitration Association, has pursued this with vigor and with much accomplishment.

The service could be of creative assistance in these types of special arrangements. It would cooperate with those established.

Form

The form which the service takes and the place it fills in the United Nations organizational chart should cause no controversy. It

would be staff in function and could very well take its place along with other subsidiaries in the Secretariat. There might be a Director in charge and suitable office personnel.

If necessary to gain acceptance of the proposal or to clear mediators there might be provided a Supervisory Board or Advisory Board. This Board would be comprised of such representatives of the organs, the blocks or the regions as may be necessary to render the service acceptable and effective.

Adoption Procedure

The Security Council or the General Assembly, either one or both, have the power to adopt the proposal. No revision of the Charter is required. It might be preferable, if possible, to approach consideration with the view to having the Assembly recommend a properly worded resolution to the Council for adoption.